

AMENDED IN ASSEMBLY MAY 9, 2006

AMENDED IN SENATE MARCH 28, 2006

SENATE BILL

No. 1601

Introduced by Senator Lowenthal

February 24, 2006

An act to add Section 40724.8 to the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 1601, as amended, Lowenthal. Air pollution: marine ports: emissions.

(1) Existing law designates air pollution control districts and air quality management districts as having the primary responsibility for the control of air pollution from all sources other than vehicular sources. Existing law also designates the State Air Resources Board as the state entity responsible for the coordination and review of all levels of government in their efforts to control air pollution. *Existing law requires the state board to adopt standards of ambient air quality for each air basin. Existing state board regulations designate specified air basins as nonattainment with these standards for fine particulate matter (PM 2.5).* Existing law imposes certain restrictions on truck idling at marine terminals and ports.

This bill would require a marine port *located in a region designated as nonattainment for PM 2.5 by the state board*, as specified, to require, as an express condition of any approved new lease or significantly renegotiated existing lease, as defined, that the lessee use best available control technology (BACT) to reduce PM and nitrous oxide (NOx) emissions from specified source categories. The bill would require a marine port, if, despite compliance with the above,

NOx or PM emissions at a marine port continue to increase, to require as an express condition of the lease that the lessee offset any increase with a further reduction in emissions of the same pollutant from operations at the leased property or from other emissions sources at the marine port that are not otherwise required by the bill to be reduced through the use of BACT. This bill would require, on or before June 1, 2007, the state board to provide guidance to each port and its lessees regarding what constitutes BACT by developing BACT guidelines, as specified.

By imposing new duties on local governmental entities that operate ports, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature hereby finds and declares all of
- 2 the following:
- 3 (a) Air pollutants from diesel engines at marine ports can
- 4 significantly affect human health.
- 5 (b) Exhaust fumes from diesel-fueled engines are known to
- 6 cause cancer. A landmark study conducted by the South Coast
- 7 Air Quality Management District, entitled the "Multiple Air
- 8 Toxics Exposure Study II," determined that over 70 percent of
- 9 the cancer risk from air pollution in the South Coast Air Basin is
- 10 attributable to diesel engine exhaust. The State Air Resources
- 11 Board has made the same finding relative to the entire state.
- 12 (c) Diesel engine exhaust is a significant source of particulate
- 13 matter (PM) emissions. Diesel PM is linked to asthma and other
- 14 respiratory diseases, and to premature death.
- 15 (d) Diesel exhaust is also a significant source of emissions of
- 16 oxides of nitrogen (NOx), which combine with sunlight to create

ground level ozone, or smog. Exposure to smog has recently been connected with decreased lung function growth in children.

(e) The State Air Resources Board recently estimated that over the next 15 years polluting activity from operations at California's ports and associated international goods movement will have an aggregate health impact equivalent to ~~approximately seventy billion dollars (\$70,000,000,000) in present value dollars. According to that same study, the state board estimated annual health costs attributable to operations at ports and international goods movement of approximately six billion dollars (\$6,000,000,000) related to premature deaths, ten million dollars (\$10,000,000) related to hospital admissions for respiratory causes, one million dollars (\$1,000,000) related to asthma attacks, twenty-three million (\$23,000,000) related to work loss days, fifty-three million (\$53,000,000) related to restricted activity days, and twenty-eight million (\$28,000,000) related to school absence days.~~ *approximately two hundred billion dollars (\$200,000,000,000) in present value dollars, including estimated annual health costs of approximately nineteen billion dollars (\$19,000,000,000) related to premature deaths, sixty-seven million dollars (\$67,000,000) related to hospital admissions for respiratory causes, thirty-four million dollars (\$34,000,000) for hospital admissions for cardiovascular causes, one million one hundred thousand dollars (\$1,100,000) related to asthma attacks, two million two hundred thousand dollars (\$2,200,000) related to acute bronchitis, sixty-five million dollars (\$65,000,000) related to work loss days, two hundred thirty million dollars (\$230,000,000) related to restricted activity days, and one hundred million dollars (\$100,000,000) related to school absence days.*

(f) California's ports are largely located in low-income communities where members of the population are on welfare or other public assistance. Accordingly, the State of California is responsible for a considerable portion of these growing port-related health care costs.

(g) In addition, the State of California and its political subdivisions are required, under the federal Clean Air Act, to reach and maintain attainment with national ambient air quality standards. Many regions of California are not in attainment with these standards, including, but not limited to, the South Coast Air

1 Basin and the San Joaquin Valley Air Basin, which have the
2 worst air quality in the nation. Further, many regions are in
3 danger of failing to meet the federal ambient air quality standards
4 by the dates required by the federal Clean Air Act. If a region
5 fails to reach attainment by the applicable deadlines, its residents
6 will continue to be exposed to severe health risks, and the state
7 risks the loss of billions of dollars in federal transportation funds
8 and other potential sanctions.

9 (h) Further, where lessees do not pay the costs of mitigating
10 air pollution from their operations at marine ports, the State of
11 California must cover these substantial expenses in order to
12 reduce health costs and achieve and maintain attainment with the
13 federal standards. For example, the Port of Los Angeles will pay
14 approximately sixty million dollars (\$60,000,000) over a
15 five-year period to clean up air pollution and other impacts from
16 a terminal leased to China Shipping. Because all marine port
17 assets, including revenues, are held in trust for the state and the
18 people of California, the state has an interest in conducting its
19 business operations in such a way as to reduce or eliminate these
20 expenses.

21 (i) Port air pollution is a systematic and statewide problem in
22 that all marine ports are a source of toxic PM pollution, and thus
23 of significant health costs to the state, regardless of the
24 attainment status of the region in which they are located.

25 SEC. 2. Section 40724.8 is added to the Health and Safety
26 Code, to read:

27 40724.8. (a) As used in this section, the following terms have
28 the following meanings, unless the context clearly requires
29 otherwise:

30 (1) “Best available control technology” or “BACT” means the
31 most stringent emission limitation or control technique that meets
32 one of the following criteria:

33 (A) The emission limitation or control technique has been
34 achieved in practice for the category or class of source.

35 (B) The emission limitation or control technique is contained
36 in any state implementation plan approved by the United States
37 Environmental Protection Agency for the category or class of
38 source. A specific limitation or control technique shall not apply
39 if the owner or operator of the proposed source demonstrates to
40 the satisfaction of the executive officer of the applicable air

1 pollution control district, or to the state board, or to a designee,
2 that the limitation or control technique is not presently
3 achievable.

4 (C) Any other emission limitation or control technique, found
5 by the executive officer of the applicable district or the state
6 board, or by a designee, to be technologically feasible for that
7 class or category of source or for a specific source, and cost
8 effective compared to measures as listed in the air quality
9 management plan or rules adopted by the district board.

10 (2) "Significantly renegotiated lease" means any renegotiation
11 or change to a lease to which a marine port, whose land is held in
12 trust for the people of California under California tidelands trust
13 law, has entered into with any entity to lease any part of port
14 property or right of way.

15 (b) All marine ports whose land is held in trust for the people
16 of California under California tidelands trust law, *and which are*
17 *located in a region designated as nonattainment for PM 2.5 by*
18 *the state board*, shall require that any new or significantly
19 renegotiated lease existing at these ports include as a condition
20 that the lessee use BACT to reduce PM and NOx emissions from
21 all of the following:

22 (1) Ocean-going vessels, including, but not limited to, oil
23 tankers, container ships, and cruise ships.

24 (2) Harbor craft.

25 (3) Cargo handling equipment.

26 (4) On-road heavy-duty vehicles.

27 (5) Locomotives that operate at or service the leased property.

28 (c) All marine ports whose land is held in trust for the people
29 of California under California tidelands trust law, *and which are*
30 *located in a region designated as nonattainment for PM 2.5 by*
31 *the state board*, shall require the lessee *of a new or significantly*
32 *renegotiated lease* to comply with subdivision (b) for all sources
33 in subdivision (b) owned, operated, leased, or otherwise used at
34 the marine port by the lessee and by requiring the same BACT
35 requirements in all the ~~lessees~~² *lessee's new or significantly*
36 *renegotiated* leases or contracts with entities that own or operate
37 any sources identified in subdivision (b) and use any of the
38 property or right-of-way being leased at the marine port.

39 (d) If, despite compliance with subdivision (b), NOx or PM
40 emissions at a particular terminal continue to increase, the marine

1 port shall require, that any new lease or significantly renegotiated
2 existing lease for that terminal include an express condition that
3 the lessee shall offset any increase with a further reduction in
4 emissions of the same pollutant from operations at the leased
5 property or from other emissions sources at the marine port that
6 are not otherwise required by this section to be reduced through
7 the use of BACT.

8 (e) On or before June 1, 2007, the state board shall provide
9 guidance to each port and its lessees regarding what constitutes
10 BACT by developing BACT guidelines relating to PM and NOx
11 emissions from the pollution sources listed in subdivision (b). In
12 addition, the state board shall provide further guidance by
13 identifying those measures that constitute BACT for each source.
14 Every year thereafter, the state board shall update its BACT
15 guidelines and measures for each source category.

16 SEC. 3. If the Commission on State Mandates determines that
17 this act contains costs mandated by the state, reimbursement to
18 local agencies and school districts for those costs shall be made
19 pursuant to Part 7 (commencing with Section 17500) of Division
20 4 of Title 2 of the Government Code.